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How Best to Strengthen the Inter-American Commission and Court

*Remarks of Viviana Krsticevic**

To begin, I would like to lay out a few of the challenges that we are currently facing in the discussion regarding the Inter-American System and its reform. One of the greatest challenges regarding the discussion of the Inter-American System continues to be the fact that the conversation is not yet broad enough. The Inter-American Commission (IACHR) and many actors in the civil society and academic spheres have made great efforts to bring additional ideas to the table. In the political sphere, however, the debate remains extremely insular. There is much to be done and this forum is an important opportunity to use the ideas proposed by Dean Grossman, [Inter-American Commission] President Orozco, and Dr. Mónica Pinto as a stepping stone for generating more and better ideas on how to improve the Inter-American System.

As director of the Center for Justice and International Law (CEJIL), and in my capacity as a human rights defender, I have participated in numerous projects concerning the enhancement of the Inter-American System. The institution that I direct has produced a myriad of papers that can be consulted on our webpage,¹ including in-depth documents on the enforcement of judgments, elections of Commissioners and judges, procedures of the Commission and of the Court, and roadmaps, both big and small, on how to reform the System. I would like to lend a more political focus to today's discussions concerning the reform of the Inter-American System, emphasizing some themes that have already been included in the current debate, as well as some that have yet to be touched upon.

A large part of the debate has revolved around exploring the actions that can be taken by the Commission and the Court (which is also part of the System and currently the target of a strong attack as well) to improve their procedures and modes

of operating in order to provide a reasonable level of accountability to those actors in the region who are posing the greatest challenges to the System.

One part of the debate is centered on the procedures that provide the balance between promotion and protection of the System, access to victims, thematic rapporteurships, and standards. Regarding how the Commission and the Court can better respond to these needs and improve the System, CEJIL as an institution and I personally have been heavily involved in advancing this agenda, and you can find many books and studies on our website.

However, I would first like to highlight a debate that is not sufficiently brought to the table but is deserving of much thought; this concerns what the Inter-American Commission's thematic agenda for the hemisphere is at this particular juncture.

Some governments insist that the Commission should dedicate more of its efforts to social rights, yet these same governments criticize the Commission when it works on indigenous peoples' issues dealing with social rights. From the perspective of societies concerned

with creating a more just and egalitarian continent, what are the most pressing human rights issues that the Commission should be involved with? And to what extent is the Commission currently engaging, or failing to engage, in this fundamental debate?

A second broad topic that has been the subject of numerous proposals and memos, and much advocacy, has to do with what States can do to strengthen the System. In particular, this focuses not on the System's own organs but rather on States' obligations to lend support to their own national institutions, which would in turn ensure the more efficient functioning of the Inter-American System. To better articulate this notion of international protection through the national protection of human rights — a topic which has been debated a number of times since the 1990s — a number of themes have worked their way into the debate, including enforcement of judgments, incorporation of standards and recommendations, funding, and the Commission's autonomy.

However, there are a number of themes regarding the role of States in various processes, for example in electing Commissioners and [Inter-American Court] Judges, which have

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been previously raised and which have not been sufficiently explored, are not part of the current debate, and have not been highlighted by States through the Working Group. How transparent is this electoral process at the internal level in each of our countries? How, and using what criterion, is it carried out? How is this process then carried out on an international level? Is it through an exchange of votes, as has historically been the case? To what extent does it, or does it not, take into account the requisite standards outlined in the American Convention [on Human Rights] for selecting Commission and Court members?² What consequences do these selection processes have for the System itself, in terms of its legitimacy and effectiveness? For example, I think that it is very serious that there will not be a single woman on the current Inter-American Court. These questions represent deficits — democratic deficits — in the selection process that must be discussed, and which are not part of the current debate. Another aspect of the debate on the role of States is linked with funding. To me it seems unfortunate that the Commissioners take up responsibilities and a hefty amount of work without proper compensation. According to Commissioners, they receive requests for Precautionary Measures every day and are responsible for carrying out visits, all while balancing earning a decent salary, maintaining their families and themselves, and carrying out their work in the System. This is an important subject: its lack of resolution generates conflicts of interest, an unfair situation for the members, and a lack of availability of the Commission's members to actually respond to their duties.

On the topic of financing, CEJIL did a comparative study (which will be published on its website) between what States spend on their national ombudsman or public defender offices, or on their supreme courts, and what they invest in the Inter-American Commission. When one looks at the numbers, USD \$102 million is allocated to the Colombian Ombudsman's office,³ a little more than USD \$80 million is allocated to Mexico's National Commission on Human Rights,⁴ etc. These numbers are in stark contrast to the pitiful USD \$7 million⁵ that the OAS allocates to the Commission and the Court, especially considering that the requests of the Commission and the Court are already quite modest. The Commission says that it needs USD \$15 million,⁶ and the Court calculates that it needs USD \$5 million.⁷ Although these numbers may seem large for average citizens, in reality the sum is a relatively small one for States to provide.

A third major debate centers on the role that States and the OAS play in geopolitics in the Americas, and its implications for the Inter-American System. We are in the midst of an array of tectonic plate movements that have resulted in a series of earthquakes and tremors that the System has yet to fully register. This has to do with the fact that there has been a shift in the balance of power, for both political and economic reasons, resulting

in an enormous discrediting of the role of the Organization of American States in the region as a whole and persecution of the Inter-American Commission and the Inter-American Court for the OAS's institutional failings, despite the great reputations these two bodies have acquired as a result of their work and its impact. The OAS's lack of prestige and legitimacy is having a prejudicial effect on the Commission and on the Court. The Secretary General, for example, has maintained that precautionary measures are not obligatory, and he has chipped away at the System's autonomy.

One key aspect of the debate on the Inter-American System that is perhaps not as openly debated has to do with the relevance of the System for the citizens of the Americas.

Here, there is an important political discussion to be had about the proper role of the Inter-American Commission and the Inter-American Court in the current political climate. What are the challenges generated by the IACHR? Is it still relevant? Is it still important for the hemisphere? Why do we need it? Do we need something else? I think that this is a key discussion that is out-

side of the narrow framework proposed by the Working Group in the Permanent Council within the political arena, but indeed it is a relevant political discussion. Indeed, this debate often-times dictates what some States either do or abstain from doing, thereby directly benefiting or hindering the OAS and/or the Inter-American Commission on Human Rights.

Another area in the debate concerning the strengthening of the System has to do with the role of the OAS as a whole. Here, there is an area of overlap between the role of States regarding the OAS and the role of States' collective actions in the OAS, which involves collective guarantees, financing, autonomy, and the value of the Inter-American Commission and the Inter-American Court in defending democracy. Some of these topics are absent from the discussion, which is really very troubling. One key aspect of the debate on the Inter-American System that is perhaps not as openly debated has to do with the relevance of the System for the citizens of the Americas. As José de Jesús Orozco, the President of the Commission, suggested, it is necessary to reopen the debate on how to broaden the dialogue, the legitimacy and the reach of the System's protection and promotion of the rights of all citizens of the Americas so that it reaches those who are most excluded, who are in the most disadvantaged situations, who are deprived of liberty, or who are members of indigenous communities. What standard should be used to measure the access to, or level of inclusion or exclusion from, the System? Much remains to be done in this area. I think that universities have done a lot of good work and have had an impact, particularly through the enormous amount of work undertaken through moot courts, clinics, and human rights classes. Moreover, I believe that there is an important space in which the Commission, [the Court], the States, universities, human rights organizations, victims' associations, and citizens can work together to improve the foundations and the scope of the protection of human rights in the region as a whole.

Endnotes

¹ See *Publicaciones*, CEJIL, <http://www.cejil.org/publicaciones> (last visited Feb. 8, 2013).

² Organization of American States, American Convention on Human Rights arts. 36, 52, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

³ DEFENSORIA DEL PUEBLO, ESTADO DE ACTIVIDAD FINANCIERA, ECONÓMICA, SOCIAL Y AMBIENTAL (2001), *available at* <http://www.defensoria.org.co/red/anexos/pdf/01/actividadFinancierDP2011.pdf>.

⁴ Presupuesto de Egresos de la Federación para el Ejercicio Fiscal 2011 [Budget of Federal Expenditures for Fiscal Year 2011], anexo 1, Diario Oficial de la Federación [DO], 7 de diciembre de 2010, *available at* http://www.diputados.gob.mx/LeyesBiblio/abro/pef_2011/PEF_2011_orig_07dic10.pdf.

⁵ OAS, PROGRAMA PRESUPUESTO DE LA ORGANIZACIÓN 34, 66 (2012), *available at* http://www.oas.org/consejo/sp/CAAP/docs/Approved%20Program%20Budget%202012%20SPA_no%20posts.pdf.

⁶ OAS, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS: STRATEGIC PLAN 2011–2015 181, *available at* <http://www.oas.org/en/iachr/docs/pdf/IACHRStrategicPlan20112015.pdf>.

⁷ Pablo Saavedra, Corte Interamericana de Derechos Humanos, *Necesidades Financieras*, at 19, OAS Doc. OEA/Ser.G/ CAAP/GT/RVPP-60/10 (12 de mayo de 2010), *available at* <http://scm.oas.org/IDMS/Redirectpage.aspx?class=CAAP/GT/RVPP&classNum=60&lang=s>.